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Der Blog des Arbeitskreises junger Völkerrechtswissenschaftler*innen

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DISCUSSION RESPONSE

“If you want a future, ... why not get a past?” (Cole Porter, “Let’s Misbehave”)

ROBERT HOWSE — 7 December, 2014



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A response to the post by Alexandra Kemmerer

As Nietzsche argues in one of his *Untimely Meditations*, the turn to history is always rooted in the needs of the present (and therefore implicitly also of the future). Alexandra Kemmerer, like Nietzsche, sees history as existing only in the plural, just as its functions in the lives of present-day human beings are plural.

But according to Kemmerer it is one particular element in the contemporary life of international law and lawyers that has given rise to the turn to history on a significant scale

(after, as she documents, a very long period of neglect): this is the disillusionment that set in after the utopian post-Cold War expectations for the perfection or at least the progressive constitutionalization of international law. The historical consciousness arises from a loss of confidence in the progressive, utopian narrative of the "West". Yet does it provide any solution to this crisis of confidence?

To use Nietzsche's categories, little of the burgeoning literature on the history of international law appears to be antiquarian or nostalgic in nature. Much seems to be critical history, some of it relating international law's past to grandiose failures or impasses, or even great crimes, in Western history. Also, I rather rarely see contemporary international law scholars turning to history to root their own scholarship in a tradition or to connect it to a, or "the", tradition – what Nietzsche calls monumental history. Emmanuelle Jouannet and Ruti Teitel (who invokes Grotius) are exceptions; and while there is a strong element of critical history in Nietzsche's sense in Koskenniemi's historical work, it also has the dimension of search for a stalwart moral identity, a meaning to the "Beruf" of "international law". In this kind of invocation of history, there is a wonderful example to my mind in Hersch Lauterpacht's essay on the Grotian tradition. It is a great work, and it defies Koskenniemi's own rather cramped understanding of Lauterpacht's spirit.

Kemmerer raises the question of disciplinary boundaries. Speaking as a North American scholar, I would say that legal history is regarded as a well-established area of scholarship in all of the institutions where I have taught or visited. The question of whether it should be pursued largely or primarily by legal scholars who have formal training in history or even

a PhD does arise from time to time. I do not doubt that some kinds of historical investigations could benefit from this sort of professional training but as Kemmerer rightly insists, history is plural. It seems like a caricature of 19th century notions of “Wissenschaft” to imagine that any or all inquiries into international law’s past would be closed to scholars without some narrow specialist qualification. Still, along the lines Kemmerer I think is pointing, collaborative research and scholarly exchanges between legal academics and historians working in history departments or historical sociology seem promising. And I tend to agree with Kemmerer’s subtly shaded characterization of the different sensibilities and even prejudices or biases of the various disciplines, which are clearly obstacles to be overcome in collaborative work.

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This post is part of our series on “Völkerrechtsgeschichten” – „histories of international law“. Earlier contributions to this series are [here](#) and [here](#).

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